2002-SBE-005

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of	)	
	)	
PacifiCorp	)	No. 90027
	)	

Representing the Parties:

For Appellant:	Eric J. Coffill, Attorney at Law Carley A. Roberts, Attorney at Law
For Respondent:	Craig Swieso, Tax Counsel
Counsel for Board of Equalization:	Charles D. Daly, Tax Counsel III

O P I N I O N

This appeal is made pursuant to section 19045[1] of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of PacifiCorp against proposed assessments of additional franchise tax in the amounts of $498,412, $517,835, $58,523, $151,313, $359,742, and $461,972 for the years ended December 31, 1984, 1985, 1986, 1987, 1988, and 1989, respectively.

The main issue in this appeal is whether sales of electricity to California entities during the appeal years were sales of tangible personal property for purposes of section 25135. That issue is a matter of first impression in California. An alternative issue is, if the sales of

[1] Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the years in issue.

electricity were sales of tangible personal property, whether the sales occurred in Oregon rather than California.

Appellant is an Oregon power company that, through its predecessor corporation Pacific Power and Light ("PPL"), has been providing electricity to the Pacific Northwest since the beginning of the previous century. Over time, PPL expanded, through the acquisition of other corporations, both the geographic areas that it served and the kinds of businesses in which it was engaged. In 1982-1985, after acquiring a large number of companies, PPL underwent a reorganization that apparently resulted in PPL becoming a division of appellant and appellant having primary responsibility for the management of the entire group of corporations affiliated with PPL.

The sales of the electricity at issue were made through the Pacific Northwest-Pacific Southwest Intertie ("Intertie"). The Intertie, which began operation in 1968, permits the transmission of excess power available in one region served by the Intertie to another region with power needs. Appellant states that, during the appeal years, the Intertie was owned by appellant,
Portland General Electric,[2] and the Bonneville Power Administration ("BPA").[3] During most of the appeal years, the Intertie consisted of two alternating current ("AC") power lines and a direct current ("DC") power line. One AC power line ran from the Malin substation in Oregon south into California. Appellant alleges that the Western Area Power Authority[4] owned this line. Appellant also alleges that appellant owned the other AC power line, which ran from the Malin substation south to Round Mountain, California. In addition, appellant alleges that appellant leased that AC line to Pacific Gas and Electric ("PG&E"), Southern California Edison ("SCE"), and San Diego Gas and Electric ("SDG&E").[5] Finally, appellant alleges that the BPA owned the DC power line from Celilo near The Dalles, Oregon, to the Nevada-Oregon border and that the

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[2] Portland General Electric is an Oregon subsidiary of Enron Corporation.

[3] The BPA is an agency of the United States government. Apparently, a major purpose of Congress in authorizing the construction of the Intertie was to provide an additional market for surplus power provided by the BPA so that the BPA would have greater financial resources to repay the United States Treasury for its investment in the Pacific Northwest power system.

[4] We assume that the "Western Area Power Authority" is the same entity as the entity designated as WAPA in footnote 9.

[5] Apparently, appellant included rental income from the portion of the line that ran from the Oregon-California border to Round Mountain, California, in the numerator of its sales factor. Appellant's treatment of that rental income does not seem to be in dispute.

Los Angeles Department of Water and Power ("LADWP") owned that line from the Nevada-Oregon border through Nevada and into California until the line terminated in Los Angeles.[6]

Appellant filed a California combined report with its affiliates for the appeal years.[7] On its Oregon corporate income tax returns for the appeal years, appellant had treated the sales of electricity to California entities as sales occurring in Oregon. Respondent's auditor in his final narrative report stated that appellant treated those sales as Oregon sales because the electricity was delivered at either the Malin substation in Oregon[8] or the Oregon-Nevada border and ownership of electricity sold over the Intertie changed at the contractual points of delivery. Respondent's auditor also concluded that the electricity sold to its California customers was generated by appellant and that appellant had its own generation facilities in Oregon, Washington, Montana, Wyoming, and Utah. Respondent determined upon completion of its audit that sales of electricity by appellant, doing business as PPL, to a number of power companies, municipalities, and government agencies located in California were California sales that should been included in the numerator of appellant's sales factor.[9]

At protest, respondent again concluded that the sales at issue were sales of tangible personal property for purposes of section 25135 and that those sales must be included in the numerator of appellant's sales factor under the then recently decided case of *McDonnell Douglas Corp. v. Franchise Tax Board* (1994) 26 Cal.App.4th 1789 ("*McDonnell Douglas*"). In *McDonnell Douglas*, the taxpayer delivered aircraft to purchasers owned by the taxpayer in

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[6] We note that appellant does not attempt to reconcile seeming inconsistencies between its statement that appellant, Portland General Electric, and the BPA were co-owners of the Intertie with its allegations regarding the ownership of the AC and DC power lines that comprised the Intertie. However, we also note that respondent does not seem to object to such inconsistencies. Therefore, we conclude that they are of little significance here.

[7] At protest, respondent determined that appellant was unitary, and therefore should be combined, with only some of the affiliates that were included in its California combined report.

[8] The audit report also stated that some of appellant's contracts with its California purchasers provided that the sales of electricity would occur at the Oregon-California border because of the possibility that an additional AC power line would be constructed that would not pass through the Malin substation.

[9] Of appellant's sales of electricity to the California entities during the appeal years, approximately 47 percent ($224,919,960) were made to SCE, 20 percent ($92,765,217) to PG&E, 18 percent ($85,684,193) to LADWP, Sacramento Municipal Utility District, and various California municipalities, and 14 percent ($66,209,039) to the California Department of Water Resources. Appellant also made sales of electricity of $4,237,171 to SDG&E during the appeal years and of $16,036,408 to the Western Area Power Administration ("WAPA") during the 1984-1986 appeal years. Because respondent apparently has concluded that the sales to WAPA may have been, in effect, sales to purchasers that were not located in California, respondent concedes that those sales should not be included in the numerator of appellant's sales factor. The record contains no additional information regarding the functions of WAPA or its constituent parts.

California, and the purchasers then arranged for the transportation of the aircraft out of California. The court in *McDonnell Douglas* rejected the "delivery" rule adopted by respondent in its Legal Ruling 348 (Feb. 21, 1973) in favor of the "destination" rule adopted by courts in a number of jurisdictions outside of California. (*McDonnell Douglas Corp. v. Franchise Tax Board*, *supra*, 26 Cal.App.4th at pp. 1793-1796.) In respondent's view, the electricity that appellant sold was analogous to the aircraft in *McDonnell Douglas* and had an ultimate destination in California.

Subsequently, appellant petitioned respondent under section 25137 to assign appellant's sales of electricity to the locations at which the title to the electricity was contractually transferred. After respondent denied appellant's petition, this timely appeal followed.

Appellant's primary contention on appeal is that the sales of electricity at issue here are sales "other than sales of tangible personal property" for purposes of section 25136. Alternatively, appellant contends that, if the sales of electricity were sales of tangible personal property, the sales should be treated as having occurred in Oregon because a "contractual point of delivery" rule should be adopted for electricity rather the "destination" rule announced in *McDonnell Douglas*. Appellant argues that a "contractual point of delivery" rule should be adopted for electricity because of alleged difficulties in tracing electricity from one point to another.

In support of its primary contention that electricity is an "intangible,"[10] appellant relies heavily upon the California Supreme Court case of *Miller v. The City of Los Angeles* (1921) 185 Cal. 440 ("*Miller*") and the California Court of Appeal case of *Pierce v. Pacific Gas & Electric Co.* (1985) 166 Cal.App.3d 68 ("*Pierce*"). In *Miller*, the issue before the Court was whether electricity was "property" for purposes of a provision of the Los Angeles City charter that permitted the purchase of "property" by the city. (*Miller v. The City of Los Angeles*, *supra*, 185 Cal. at pp. 443-444.) After holding that electricity was "property" for purposes of the Los Angeles city charter, the Court stated that "[e]lectricity is rather an intangible asset, and the word 'property' is perhaps not the most apt word by which to describe the supply of electrical energy thus sought to be acquired for the use of the city." (*Miller v. The City of Los Angeles*, *supra*.)

In *Pierce*, the appellate court considered whether electricity that injured a consumer as the result of a transformer malfunction was a "product" rather than a service for purposes of strict liability in tort. (*Pierce v. Pacific Gas & Electric Co.*, *supra*, 166 Cal.App.3d at p. 81.) Holding that the seller of electricity was strictly liable in tort to the consumer, the

[10] Like respondent, appellant sometimes uses the term "an intangible" or other similar designation as synonymous with the term "other than sales of tangible personal property" under section 25136.

appellate court in *Pierce* stated that policy justifications for imposing strict liability in tort was more significant in reaching its holding than merely whether electricity should be labeled a "product." (*Pierce v. Pacific Gas & Electric Co.*, *supra*, 166 Cal.App.3d at p. 82.) However, after observing that California and other courts "have not dwelled unduly on electricity's physical properties" in the "product" context, the appellate court quoted in a footnote the following statement suggesting that its observation might not be entirely correct: "[b]ecause electricity is intangible, it has been consistently argued by strict liability defendants in cases involving injury by electricity that the intangible force of electric current is not a 'product' within the meaning of [the Restatement of Torts]….' (*Elgin Airport Inn v. Commonwealth* (1980) 88 Ill.App.3d 477 [410 N.E.2d 620,623]." (*Pierce v. Pacific Gas & Electric Co.*, *supra*, 166 Cal.App.3d at p. 82, note 6.) Appellant also cites a number of cases from other state courts that, like *Miller* and *Pierce*, do not address the tangibility or intangibility of electricity in the context of a corporate franchise or income tax.

In further support of its position that electricity is an "intangible," appellant points out that respondent itself treated electricity as "intangible property" in its Multistate Audit Technique Manual until 1986. In addition, appellant points out that respondent has characterized electricity as an "intangible" for purposes of Public Law 86-272[11] in its "UDITPA Manual" (FTB Publication 1050 (Revised 10-83)) and in a letter to a commercial publisher. Appellant also notes that the Multistate Tax Commission ("MTC") considers electricity to be "intangible property" in its MTC Corporate Income Audit Procedure Guideline Manual. In addition, appellant notes that, in a 1999 report, the Federation of Tax Administrators stated that electricity should be considered a service, rather than tangible personal property, for purposes of establishing "nexus."[12]

Appellant also cites the *Appeal of Retail Marketing Services, Inc.* (91-SBE-003), decided by the Board on August 1, 1991, for the proposition that electricity can be distinguished from "tangible personal property." In *Retail Marketing Services*, we observed that there was no statutory definition of "tangible personal property" but that the taxpayer had correctly advanced the view that "the ordinary and necessary meaning of 'tangible' is that which can be felt by touch, having actual form and substance." However, we also observed that such a definition of "tangible" is much too broad to be used in determining whether the property at issue in that matter was "tangible personal property" for purposes of the property factor under section 25129.

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[11] Public Law 86-272 provides, in pertinent part, that no state shall have the power to impose a net income tax on income derived within the state if the only business activity within the state is the solicitation of orders for sale of tangible personal property, which orders are sent outside the state for approval or rejection and, if approved, are filled by shipment or delivery from a point outside the state. (15 U.S.C.A., § 381(a)(1).)

[12] "Nexus," in this context, is another way of saying that a corporate taxpayer has sufficient connections with a state to justify, for constitutional purposes, taxation of the taxpayer by that state.

In the matter under consideration here, appellant has provided a declaration under penalty of perjury by Richard C. Dorf, Professor of Electrical Engineering at the University of California at Davis, in which he concludes that "intangible personal property," under a definition allegedly consistent with *Retail Marketing Services*, encompasses electricity.[13] Appellant has also provided a list of cases from other states, including *Otte v. Dayton Power & Co.* (1988) 37 Ohio St. 3d 33 [523 N.E.2d 835] ("*Otte*"), to support the proposition that electricity is an "intangible" under *Retail Marketing Services*.

Finally, appellant characterizes respondent's change in position regarding the taxation of electricity as an invalid "underground regulation" whose purpose is merely to increase the collection of revenue. Appellant also expresses concern that treating electricity as tangible personal property might provide unanticipated nexus with California for companies engaged in electronic commerce.

Respondent continues to contend that electricity is tangible personal property whose sales occurred in California under the controlling authority of *McDonnell Douglas*. In support of that contention, respondent proposes a definition of "tangible personal property" as "the collective rights that are associated with things that exhibit physical attributes, which are not related to land." Respondent's proposed definition is distilled from a broad collection of sources that include dictionary definitions of "tangible personal property," a portion of a law review article[14] that discusses the distinction between the property law concepts of "choses in possession" and "choses in action," and respondent's apparent view that the rationale underlying the holding of *Retail Marketing Services* is that the property at issue in that matter was a "chose in action" and, therefore, was "intangible personal property." Respondent also takes the position that electricity is "tangible personal property" even under the definition of "tangible" that appellant advanced in *Retail Marketing Services*. Like appellant, respondent cites a number of cases from other jurisdictions in support of its position. However, like the cases cited by appellant, respondent's cases fail to address the tangibility or intangibility of electricity in the context of a corporate franchise or income tax.

In a report submitted to us by respondent and that respondent characterizes as providing a necessary conceptual framework for discussing the scientific and technical aspects of electricity, Professor Joel Fajans, Professor of Physics at the University of California at Berkeley, states:

> "Electricity is actually a catchall word encompassing many related concepts, each with a very specific definition. These concepts include *charge*, *current* (measured in amps), *voltage* (measured in

[13] Professor Dorf's testimony at the hearing in this matter was to the same effect.

[14] Cowdrey, *Software and Sales Taxes: The Illusory Intangible* (1983) 63 B.U. L.Review 181, 197-209.

> volts) *power* (measured in watts) and *energy*. . . . [T]he flow of charge constitutes a *current*. Charge is usually made up of electrons, so current is typically the flow of electrons . . . . The ability of each charge to do something useful . . . is related to voltage. Thus, the rate at which electricity performs useful services equals the product of the current (the number of charges) and the voltage (the work done by each electron.) This rate is called the *power* . . . . [¶] . . . The total amount of power consumed over time is called the energy, which is measured in kilowatt-hours. [Fn. Omitted.] . . . The power company bills users for the amount of energy that they consume . . . .
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> The electric power distribution system is quite complicated. In essence, however, it can be reduced to a circuit consisting of a power source, a transmission line and a load . . . . The power source must be capable of supplying a current at a reasonable voltage, and can be, among other things, a battery, a hydroelectric plant, or a gas fired turbine generator. The transmission line can be as simple as a pair of wires like those in a household power cord. [Fn. Omitted.] . . . . A load is the generic name for devices that use the electricity to perform a useful service."

(Resp. Br., exhibit B, p. 2.)

Later in his report, Professor Fajans further states:

> "**Electricity is physical and material because, microscopically, it consists of the flow and "pressure' of a material entity, namely electrons, and macroscopically, it can be sensed (felt, tasted, seen, and heard), measured, weighed, and stored, and is subject to the universal laws of nature.** The follwing sections discuss each of these properties in rough order of importance . . . . [¶] . . . Without electrons, electricity cannot be transmitted. Though electrons themselves are very small and lightweight, they are one of the basic constituents of matter; common matter like hydrogen and iron consists of electrons, protons, and neutrons in roughly equal number. Thus, there is nothing more physical and material than an electron. Since electricity itself consists of the flow of a material object, electricity is physical and material."

(Resp. Br., exhibit B, p. 5.)

Respondent acknowledges that the term "other than tangible personal property" in section 25136 encompasses not only intangible personal property but also services. However, respondent argues that sales of electricity are not sales of services because electricity (1) does not essentially relate to activities conducted by individuals for the benefit of others and (2) is purchased for its "physical characteristics." From a comment in Professor Fajans' report regarding the capital required to generate and transmit electricity, respondent also argues that services performed by individuals are only incidental in comparison to generators and power lines. Other than a definition of "services" from a legal dictionary, respondent cites no authority directly in support of its arguments.

With respect to the alternative issue here, respondent argues that appellant's position that the "destination" rule stated in *McDonnell Douglas* may not be applied to electricity because electricity cannot be traced from one point to another is wrong. In support of its argument, respondent points out that electricity is "fungible" and that it is irrelevant whether each electron sold by appellant can be traced to a destination in California as long as purchasers in California receive electricity equal to the amount of electricity sold by appellant. Respondent also argues that applying a "delivery" rule to electricity is inconsistent with the language in section 25135 that the f.o.b. point[15] or other conditions of the sale must be disregarded.

Respondent concedes that if the sales of electricity at issue are sales of "other than tangible personal property" for purposes of section 25136, the sales were not in California under that section because a majority of the "income-producing activities" related to those sales were performed in other states, based on cost of performance.

Section 25128 provides that all business income shall be apportioned to California by multiplying such income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three. Section 25134 defines the sales factor as a fraction, the numerator of which is the total number of sales of the taxpayer in California during the income year, and the denominator of which is the total sales of the taxpayer everywhere during the income year.

Section 25135 provides that sales of tangible personal property are in California if: (a) the property is delivered or shipped to a purchaser, other than the United States

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[15] With regard to the term "f.o.b. point," California Commercial Code section 2319 (1) provides, in pertinent part, that "(a) [w]hen the [delivery] term is F.O.B. [an abbreviation for "free on board"] the place of shipment, the seller must at that place ship the goods in the manner provided in this division (Section 2504) and bear the expense and risk of putting them in the possession of the carrier; or (b) [w]hen the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this division Section 2503."

Government, within California regardless of the f.o.b. point or other conditions of the sale; or (b) the property is shipped from an office, store, warehouse, factory, or other place of storage in California and (1) the purchaser is the United States government or (2) the taxpayer is not taxable in the state of the purchaser. Section 25136 provides that sales, other than sales of tangible personal property, are in California if: (a) the income-producing activity is performed in California; or (b) the income-producing activity is performed both in and outside California and a greater proportion of the income-producing activities is performed in California than in any other state, based on costs of performance.

California Code of Regulations, title 18, section 25136, subdivision (b), ("Regulation section 25136, subdivision (b)") provides as follows:

> "The term 'income producing activity' applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. Such activity does not include transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, income producing activity includes but is not limited to the following:
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> 1. The rendering of personal services by employees or the utilization of tangible and intangible property by the taxpayer in performing a service.
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> 2. The sale, rental, leasing, licensing, or other use of real property.
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> 3. The rental, leasing, licensing or other use of tangible personal property.
>
> 4. The sale, licensing or other use of intangible personal property.
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> "The mere holding of intangible personal property is not, of itself, an income producing activity."

We agree with appellant's primary contention that the sales of electricity here are "other than sales of tangible personal property" for purposes of section 25136. Because their discussions of the tangibility or intangibility of electricity are not in the context of a corporate franchise or income tax and are sometimes, as in *Miller* and *Pierce*, mere dictum, the cases and other authority upon which appellant relies are not controlling here. However, discussions of

electricity in some of those cases are nonetheless helpful in resolving the main issue in the instant matter. For example, in the *Otte* case cited by appellant, the Ohio Supreme Court distinguished electricity from a "product" in the context of strict liability in tort by stating as follows:

> "A 'product' is anything made by human industry or art. electricity appears to fall outside this definition. This is so because electricity is the flow of electrically charged particles along a conductor. [The power company] does not manufacture electrically charged particles, but rather, sets in motion the necessary elements that allow the flow of electricity. What we have here is a purported defect in the distribution system. Such a system is, in our view, a service."

(*Otte v. Dayton Power & Co.*, *supra*, 37 Ohio St. 3d at p. 37.)

Like the court in *Otte*, we conclude that the sales of electricity here are sales of services that essentially consisted of appellant's setting and keeping in motion, through its generation and transmission facilities, electrically charged particles. Also as in *Otte*, we further conclude that the basic reason the generation and transmission process employed by appellant is appropriately characterized as a service is that the process does not result in either (1) the "creation" in its generation facilities of any such arguably tangible particles or (2) the "injection" of those particles into its transmission facilities.

At this juncture in our analysis, it is necessary to point out that exactly what constitutes the "sales of electricity" at issue here is not well specified in the record. For example, appellant has not presented us with financial or other records that segregate its "sales of electricity" to California entities into such components as sales resulting from the generation of electricity and sales resulting from the transmission of electricity. However, the final narrative report of respondent's auditor notes that when a California entity purchases "power" from appellant, appellant "turns up" its generator to put more power into the Intertie. In addition, the auditor's report notes that there were "wheeling" charges for transmitting electricity over power lines. In view of the auditor's notations, we infer that the generation and transmission of electricity by appellant are the components of the "sales of electricity" that we need to consider here. The auditor's report also states that a California entity would pay a "use of facilities" charge to use power lines owned by another entity. However, as indicated in footnote 5, it appears that rental payments for the California portion of those lines are not at issue here because appellant has already included them in the numerator of its sales factor under Regulation section 25136, subdivision (b)(2).

Even though respondent seems to argue that the generation and transmission of electricity are not properly treated as services under section 25136 because they are not personal services, Regulation section 25136, subdivision (b)(1), explicitly states that "income producing activity" is not limited to personal services by employees but includes the use of tangible and intangible property in performing a service. In addition, we concluded in the *Appeal of Mark IV Metal Products, Inc.* (82-SBE-181), decided by the Board on August 17, 1982, that the fabrication in California of metal owned by a Texas customer into seat parts for that customer, through the use of the taxpayer's "own labor and machinery," was a service that was includable in the numerator of a taxpayer's sales factor under section 25136. For those reasons, we reject respondent's argument that the generation and transmission of electricity are not properly treated as services under section 25136 because they are not personal services.

Respondent appears to predicate its argument that electricity is not a service because it is purchased for its "physical characteristics" on the assumption that the generation and transmission of electricity are inseparable from, and incidental to, its "physical characteristics." However, as suggested by *Otte*, the "physical characteristics" of electricity in the instant matter are essentially the electrons already in the power lines that have been set and kept in motion by appellant's generation and transmission system.[16] Because appellant has apparently already paid for the use of the electrons in the power lines by payment of the "use of facilities" charge in transactions that are separate from, and independent of, those regarding the generation and transmission of electricity, we conclude that the generation and transmission of electricity here are neither inseparable from, nor incidental to, its "physical characteristics." Because we disagree with respondent's underlying assumption, we also disagree with its argument that electricity is not a service because it is purchased for its "physical characteristics."

With regard to respondent's argument that the services performed by appellant in the generation and transmission of electricity were merely incidental in comparison to generators, *Mark IV Metal Products* clearly supports the view that the use of equipment, such as a generator, by a taxpayer as part of the process by which a service is performed does not detract from the conclusion that the taxpayer is performing a service for purposes of section 25136. As discussed above, respondent's argument that the generation and transmission of electricity were merely incidental in comparison to power lines also fails because the rentals of the power lines are transactions that are separate from, and independent of, those relating to the generation and transmission of the electricity.

Although Professor Fajan's discussion of electricity in his report seems intended to support respondent's position that electricity is "tangible personal property" by emphasizing

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[16] For a more complete discussion of the generation of electricity in modern power plants, see Serway, Physics for Scientists and Engineers with Modern Physics (1990), pp. 886-888.

the "physical and material" nature of electrons, his discussion is also consistent with the definition of electricity in *Otte* as a "flow of electrically charged particles along a conductor." In addition, Professor Fajan's discussion of electricity is also consistent with the conclusion of the court in *Otte* that the "distribution system" with respect to electricity there was a service. In our view, just as the "distribution system" by which the flow of electrically charged particles occurred in *Otte* was a service, appellant's generation and transmission of electricity were also services under section 25136.

Because we conclude that sales of the generation and transmission of electricity here were sales of services performed for the most part outside of California, we further conclude that those sales were sales of "other than tangible personal property" and were properly excluded from the numerator of appellant's sales factor. Therefore, based upon the foregoing discussion, we conclude that, for purposes of California tax law, electricity is intangible. In view of our conclusions, we need not address the alternative issue in this matter.

Accordingly, respondent's action is hereby reversed.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, pursuant to section 19047 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of PacifiCorp against proposed assessments of additional franchise tax in the amounts of $498,412, $517,835, $58,523, $151,313, $359,742, and $461,972 for the years ended December 31, 1984, 1985, 1986, 1987, 1988, and 1989, respectively, be and the same is hereby reversed.

Done at Sacramento, California, this 12 day of September, 2002, by the State Board of Equalization, with Board Members Dean Andal, Claude Parrish and *Marcy Jo Mandel present.

_____, Chairman

_____, Member

Mr. Dean Andal, Member

Mr. Claude Parrish, Member

*Ms. Marcy Jo Mandel, Member

PacificCorp_cdd

* For Kathleen Connell per Government Code section 7.9